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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. AUBRY PATTERSON, Defendant.	POSITION OF DEFENDANT WITH RESPECT TO SENTENCING FACTORS Case No. 2:08-CR-187 DB
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The Defendant, Aubry Patterson, by and through counsel of record, L. Clark Donaldson, pursuant to D.U. Crim. Rule 32.1 of the Criminal Rules of Practice of the United States District Court for the District of Utah, states that, after reviewing the Pre-sentence Report (PSR) prepared by the United States Probation Office, no sentencing factors as described in this report are disputed by the Defendant with the following exceptions:

1. Mr. Patterson requests that the last sentence of paragraph 27 and the portion of the last sentence of paragraph 29 of the PSR which indicates essentially that he threatened to shoot BLM Rangers or BLM officials be deleted.

Mr. Patterson bases his request upon the grounds that these references are inaccurate (Mr. Patterson's actual words were captured on a videotape)¹, are not relevant conduct and they were speculative and lacking in reliability. On the morning of August 31, 2007, the CS² drove to Mr. Patterson's home in Dodge Canyon, Utah, located a few miles off highway 191. At one point during Mr. Patterson's rambling conversation with T.G.³, he explains he, Patterson, does not dig in caves to find artifacts because he could be trapped there by someone from the government and that if he was so trapped he would "have to shoot 'em because I'm not going to prison." He goes on to say that he would rather die than go to prison. Govt. Discovery at recording of T.G./Patterson on 8-31-2007 at 9:59:57. Mr. Patterson does not ever explain which government employees or governmental agency he would fear in the event this hypothetical circumstance occurred. Both Mr. Patterson and T.G. laugh at the absurdity of his remark when it is made.

Aubry's improvident and speculative words about shooting "'em' or them" are not relevant conduct to anything in this case. They are simply an explanation of the reason he does not engage in certain methods of illegal activity during what was a bull session. This type of false bravado is bandied about in everyday conversation and lacks the reliability to be relevant conduct under USSG §§ 1B1.3 & 6A1.3(a).

¹The relevant conversation is found from 9:59:20 through 10:00:20 on the tape for this day.

²He was later identified by several sources as a man whose initials are T. G. T.G. died earlier this year following an incident where he was intoxicated, refused to comply with the commands of local law enforcement authorities to drop his gun, was behaving erratically and was shot and killed by law enforcement officers.

³This August conversation, according to the videotape recording, lasted approximately 89 minutes and 21 seconds. The October 7, 2010 conversation lasted 66 minutes and 22 seconds.

2. Mr. Patterson objects to paragraph 52 of the PSR as it is unsupported by any reliable information such as court records or the criminal history records kept by law enforcement authorities and provided by the government in discovery. Although it is true that Mr. Patterson said during his August 31, 2007 visit from T.G. that he had been indicted three or more times for archaeological crimes, this appears to be puffing engaged in to impress his visitor.

DATED this 23rd day of June 2010.

/s/ L. Clark Donaldson
L. CLARK DONALDSON
Assistant Federal Defender

CERTIFICATE OF DELIVERY

I hereby certify that a true and correct copy of the foregoing **POSITION OF DEFENDANT WITH RESPECT TO SENTENCING FACTORS** was sent via electronic notice through the ECF filing system to all parties named below on this 23rd day of June 2010, to:

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/s/ G. Wynhof
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